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From: Payne, James
Sent: Tue 2/7/2017 12:38:59 AM
Subject: Fwd: Enforcement cases
[Consolidated Response - Non CERCLA -dc \(2-2-1-17\) \(Enforcement Confidential - Do Not Distribute\).docx](#)
[ATT00001.htm](#)
[Consolidated Response - Superfund - dc \(2-2-17\) \(Enforcement Confidential - Do Not Distribute\).docx](#)
[ATT00002.htm](#)
[Draft Template for Case Summaries \(003\).reg.docx](#)
[ATT00003.htm](#)
[Briefing.schedule.docx](#)
[ATT00004.htm](#)
[WF Case Summary - 2.3.17.docx](#)
[ATT00005.htm](#)
[Fact Sheet Template.docx](#)
[ATT00006.htm](#)

Forwarding this additional input from Dave Cozad, acting deputy AA for OECA, on enforcement cases needing/not needing further briefing for Justin Schwab. Justin is serving as a transition point person for OECA and OGC.

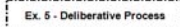
NOTE that this OECA process is separate from the Office of Policy process that the region also consults in deciding next steps in enforcement cases.

The OECA input below includes an attached briefing schedule for Justin over next couple months, and R6 scheduled cases are listed immediately below. OECA and regions conduct the briefings.


Jim

OECA BRIEFING SCHEDULE for JUSTIN SCHWAB

Week of Feb 6:

-  RCRA admin consent order. HQ is listed as doing the briefing. *SHOULD R6 ALSO PARTICIPATE in this briefing?*

March/April:

-  judicial litigation case w large civil penalty at trial level and court arguments on appeal

Ex. 5 - Deliberative Process

Sent from my iPhone

Begin forwarded message:

From: "Cozad, David" <Cozad.David@epa.gov>
Date: February 6, 2017 at 5:39:13 PM CST
To: "Studlien, Susan" <Studlien.Susan@epa.gov>, "Anderson, Kate" <Anderson.Kate@epa.gov>, "Simon, Paul" <Simon.Paul@epa.gov>, "Coe, Mary" <Coe.Mary@epa.gov>, "Beers, Samantha" <Beers.Samantha@epa.gov>, "Gordon, Scott" <Gordon.Scott@epa.gov>, "Wilkes, Mary" <Wilkes.Mary@epa.gov>, "Nelson, Leverett" <nelson.leverett@epa.gov>, "Walts, Alan" <walts.alan@epa.gov>, "Payne, James" <payne.james@epa.gov>, "Opekar, Kimberly" <Opekar.Kimberly@epa.gov>, "Schefski, Kenneth" <Schefski.Kenneth@epa.gov>, "Quast, Sylvia" <Quast.Sylvia@epa.gov>, "Johnson, Kathleen" <Johnson.Kathleen@epa.gov>, "Kowalski, Ed" <Kowalski.Edward@epa.gov>, "Stern, Allyn" <Stern.Allyn@epa.gov>, "Dwyer, Stacey" <Dwyer.Stacey@epa.gov>, "Humphrey, Leslie" <Humphrey.Leslie@epa.gov>, "Skelley, Dana" <Skelley.Dana@epa.gov>, "Singletary, DeAndre" <Singletary.DeAndre@epa.gov>, "Weber, Rebecca" <Weber.Rebecca@epa.gov>
Cc: "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Shinkman, Susan" <Shinkman.Susan@epa.gov>, "Leff, Karin" <Leff.Karin@epa.gov>, "Gargas, Toni" <Gargas.Toni@epa.gov>, "LaBoda, Sarah" <LaBoda.Sarah@epa.gov>, "Miles, Erin" <Miles.Erin@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Mackey, Cyndy" <Mackey.Cyndy@epa.gov>, "DeLeon, Rafael" <Deleon.Rafael@epa.gov>
Subject: RE: Enforcement cases

Hi all,

Further update for you. We have discussed all the matters on last week's enforcement case tables with Justin Schwab. We have an understanding with him as to a large number of matters on the tables which do not raise issues of significance to him and do not require further consultation with the transition team (unless new issues arise or something significant about the matter changes.) We also have an understanding with him on a much shorter list of matters on which he would like to be briefed before we move forward with action that commits the Agency to a particular direction (e.g., signing a settlement, filing a complaint, issuing a UAO, filing a brief).

The attached tables reflect these understandings. Items with the case names in green are matters where, based on the current state of the matter, we should continue to work the case to conclusion without need for additional consult with Justin. Items with case names in red are ones where Justin has identified a significant interest. You should continue to fully work those red cases and move them forward, but don't take that last step committing us to action until we brief Justin.

Note: These tables are last week's tables. They don't reflect any updates. Please don't use them for any purpose other than identifying whether a matter is green or red.

Also attached is a proposed briefing schedule on the cases that need briefing. It lays out a specific schedule for the next three weeks, and then a list of remaining items to be briefed later, in March and April. It is based on four things: (a) our best sense of when things need to be briefed so that there is not undue delay; (b) an effort to group things together that make sense from an efficiency perspective; (c) what is manageable each week time-wise; and (d) some requests from Justin on specific items he wants to hear about soon. If you have matters that aren't scheduled for the next three weeks but for an important reason need to be, please let me know. We know this briefing schedule needs to be somewhat fluid.

Regarding the briefings: attached are templates for briefing papers. The one titled "Fact Sheet Template" is for CERCLA, and the one titled "Draft Template for Cases" is for non-CERCLA. What we are looking for is objective papers that fully and clearly identify issues of significance about the case, especially any risks or shortcomings in the case. We intend to have regions on video for the briefings. Plan generally on 20-30 minutes for a case. Also attached as a guide is an example write up for the Ex. 5 - Deliberative Process case.

Finally, and perhaps most importantly, the overall concept of "no surprises" and erring on the side of elevating is as important now as it was two weeks ago. There are numerous reasons why a "green" case might flip back to one that requires consult. For example, significant comments on a lodged decree; or settlement falls apart and we want to issue a UAO or file a complaint; or we reach an impasse on a significant issue and the defendant decides to go public or political; or negotiations evolve and the settlement changes to include a large or unusual mitigation project or SEP. Any of those things would be a change that would require some consultation.

You all have been terrific about elevating issues and erring on the side of elevation. Please, for the time being, continue in that mode.

Sorry for the length of this email. And thank you for your patience.

As always, feel free to call or email if you have questions.

Thanks

Dave

202-564-4861

From: Cozad, David

Sent: Thursday, February 2, 2017 11:11 AM

To: Studlien, Susan <Studlien.Susan@epa.gov>; Anderson, Kate <Anderson.Kate@epa.gov>; Simon, Paul <Simon.Paul@epa.gov>; Coe, Mary <Coe.Mary@epa.gov>; Beers, Samantha <beers.samantha@epa.gov>; Gordon, Scott <Gordon.Scott@epa.gov>; Wilkes, Mary <Wilkes.Mary@epa.gov>; Nelson, Leverett <nelson.leverett@epa.gov>; Walts, Alan <walts.alan@epa.gov>; Payne, James <payne.james@epa.gov>; Opekar, Kimberly <Opekar.Kimberly@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Kowalski, Ed <Kowalski.Edward@epa.gov>; Stern, Allyn <Stern.Allyn@epa.gov>; Dwyer, Stacey <Dwyer.Stacey@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Shinkman, Susan <Shinkman.Susan@epa.gov>; Leff, Karin <Leff.Karin@epa.gov>; Gargas, Toni <Gargas.Toni@epa.gov>; LaBoda, Sarah <LaBoda.Sarah@epa.gov>; Miles, Erin <Miles.Erin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>; DeLeon, Rafael <Deleon.Rafael@epa.gov>

Subject: Enforcement cases

Hi all,

I want to share with you where we are with the transition team at the moment on moving forward with enforcement cases. Thanks in large part to you and your staffs' work in providing information about our docket, we have made considerable progress. See below. We'll discuss this topic generally and try to answer any questions you have during the ED/RC call later today.

Four overarching understandings we have with the transition team:

1. On lodged civil judicial cases, we can move to enter without further consultation unless there are significant adverse public comments on the decree. If there are significant adverse comments, we need to raise the matter to the transition team.
2. Information requests are in general fine to proceed without any notice or consult, unless they are particularly unusual in burden or scope, or particularly sensitive or high profile.
3. In general, we will provide notice of all new referrals after we send the referral to DOJ; we are not providing prior notice on referrals. However, for particularly large or controversial cases, regions may want to consider, in their discretion, seeking an early consult on a planned referral, to gauge support for the case before investing in development of the referral.
4. For matters in litigation, we will share information in advance with the transition team on briefs, motions, hearings, or trials where we will be taking positions on important precedential or policy issues.

Following are the current understandings we have on CERCLA cases:

All cases can go forward to conclusion without further consultation with the transition team unless the matter involves one of the following criteria:

CERCLA settlements with site costs over \$50M

UAOs

Warrants

Filing of a civil judicial complaint for cost recovery or to enforce a UAO

Matters with state or local govt opposition, or significant elected official interest

Serious dispute with a federal PRP

Anything else involving a controversial/significant policy issue, or issues of particular sensitivity

On non-CERCLA cases:

All cases can go forward to conclusion without further consultation with the transition team unless the matter involves one of the following criteria: _

Administrative and civil judicial settlements with penalties above \$500,000

Any settlement with SEPs or mitigation projects valued at over \$1M

Stipulated penalties over \$500,000

Filing of a civil judicial complaint (not in conjunction with a settlement)

ISE orders

UAOs

Matters with state or local govt opposition, or elected official interest

Anything else involving a controversial or significant policy issue, or issues of particular sensitivity

Two final notes.

1. We are hoping to get agreement soon to be able to narrow these categories of cases requiring consult even further, and will let you know as things progress.

2. We will be scheduling briefings for Justin on a limited number of time-sensitive specific cases starting early next week, and will be reaching out to the regions to participate in the briefings. We will need one pagers in advance for those, and will get you a template for those later today.

Thanks all for bearing with us and working with us as we navigate this new territory.

Dave